THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.22491 OF 2007

DATED: 30-10-2007

BETWEEN

Nagarjunapu Pushpa,
D/o. Nagabushanam,
R/o. Kalakova Village,
Munagala Mandal,
Nalgonda District and
74 others.

...PETITIONERS

AND

The District Election Authority and
District Collector (Panchayat Wing),
Nalgonda and others.

...RESPONDENTS

ORDER:

It is the case of 75 petitioners, all residents of Kalakova Village, Munagala Mandal, Nalgonda District, that they have made an application on 04.10.2007 before the second respondent – Deputy District Election Authority/Revenue Divisional Officer for inclusion of their names in the voters list of Kalakova Gram Panchayat, as all of them are entitled to be enrolled as voters of the said Gram Panchayat. It is stated that pursuant to the said application enquiry has been conducted with regard to the genuine claim of the petitioners and though they are entitled for inclusion of their names no orders have been passed and in the meanwhile, election notification has been issued on 15.10.2007.

2. Petitioners question the action of the respondents in not including

their names in the eligible voters lists of the Kalakova Gram Panchayat so as to enable them to exercise their franchise in the elections for the office of the Sarpanch of Kalakova Gram Panchayat and to declare the election notification dated 15.10.2007 as illegal and arbitrary.

3. Learned counsel for the petitioners submits that as the election process had already started none of the petitioners is intending to file nomination as the date is already over but their only grievance is that that their claim for inclusion of their names had already been enquired into and found to be genuine, therefore, they may be permitted to exercise their franchise.

4. Sri. V.V. Prabhakara Rao, learned counsel appearing for the election authority submits that the electoral roll was published indicating the voters on 10.09.2007 but the petitioners have filed their application on 04.10.2007; even assuming that their application has been enquired into and their claim has been found to be genuine, once the election notification has been issued the second respondent is not empowered to include the names of the petitioners in the electoral rolls. Under Rule 3A(1) of the Electoral Rules issued in G.O.Ms.No.879 PR, RD & R Department dated 03.12.1994 the Electoral Registration Officer in respect of a Gram Panchayat under his jurisdiction may allow an application for inclusion of a name in the Electoral Roll of the Gram Panchayat if he is satisfied that the applicant had a genuine claim for such inclusion and can also exclude ineligible persons from the rolls before the date of issuance of the notification by the State Election Commissioner under Rule 4(2) of the Andhra Pradesh Panchayat Raj (Conduct of Elections) rules, 1994.

5. It is stated that the election notification has been issued under Rule 4(2) of the aforesaid Rules on 15.10.2007 and once the election notification has been issued and election process has been set in motion there is no

power for the Electoral Registration Officer to include the name of any person in the electoral roll.

6. Learned counsel for the respondents placed a judgment of Learned Single Judge of this Court in W.P.No.13152 of 2007, which also relates to the similar grievance of non-inclusion of the names of the petitioners therein in the voters list. While dealing with similar contentions the writ petition was dismissed as follows:

> "The case of the petitioner is that serious irregularities were crept in preparation of voters' list, in that, more than five hundred voters, who were issued identity cards by the Election Commission of India, were included not included in the voters' list for the present election. According to the learned counsel, if the election is allowed to go on without inclusion of valid voters in the electoral list, the same would be illegal and contrary to law.
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> It has been repeatedly held by a catena of decisions of the Supreme Court that ordinarily election process cannot be challenged in Writ Petition, especially after issue of Election Notification. In Writ Petition Nos.22277 and 22293 of 2003, dt.29.10.2003, I have referred the decisions of the Supreme Court as well as this Court in ***N.P.Ponnuswami v. Returning Officer***, ***Meghraj v. Delimitation Commission, P.Mastanaiah v. Delimitation Commissioner, New Delhi***, ***Pradhan Sangh Kshetra Samiti, Jabalpur v. State of U.P, State of U.P. v. Pradhan Sangh Kshetra Samiti, Lakshmi Charan Sen v. A.K.M.Hassan Uzzaman, Gujarat University v. N.U.Rajguru, Anugrah Narain Singh v. State of U.P.***, and ***C. Subrahmanyam v. K. Ramanjaneyulu,*** and summarized the principles governing the judicial review under Article 226 of the Constitution of India in election matters as under:
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> i. If the election law creates rights and provides for enforcement by a Special Tribunal, ordinarily, a Writ Petition cannot be maintained questioning election process including preparation of voters' list.
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> ii. When an election dispute is considered, it must be kept in mind that the right to vote, contest or dispute the election is neither fundamental right nor a common law right, but is a right regulated by statutory provisions. It is therefore not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India by-passing the machinery designated by the relevant Act. Ordinarily, the remedy provided by the Statute must be followed before the

authority designated therein.

iii. When the election process is set in motion by issuing election notification, all the disputes including illegalities, irregularities and improprieties allegedly committed by the election authorities in preparing the voters list, conducting elections, counting votes, etc., should be brought before a Special Tribunal by means of an election petition and Writ Petition is not proper remedy.

iv. In exercise of powers under Article 226 of the Constitution this Court cannot ordinarily interfere in election matters whatever be the illegality alleged when once the election process is commenced by issuing a direction to include the names of certain voters, delete certain voters and/or undertake the exercise of preparation of voters list afresh.

v. Even if the claims and objections by prospective voters are not finally disposed of and even if the objections are justified as to the allegations and contraventions of law, still the election process cannot be arrested. The elections must be allowed to go on on the basis of electoral list which is in force on the date of making nominations;

vi. Even if there is non-compliance with the provisions of the Act, Rules or Orders made under the Act, the dispute has to be brought before the duly constituted Election Tribunal. Even in such an event, the Election Tribunal can interfere with the result of the election only when it materially affects the result of the returned candidate.

Further, as per Section 233 of the A.P.Panchayat Raj Act, 1994, no election held under the said Act shall be called in question except by election petition presented to duly constituted Election Tribunal. The petitioner is therefore given liberty to approach the Election Tribunal after completion of the election process. The Writ Petition cannot be entertained."

Following the aforesaid judgment, the writ petition is dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

October 30, 2007
DSK